Prosecutions, (1890) 24 Q.B.D. 577 at p. 581 Cave, J. said:

> "If the prosecution was not vexatious in its inception, but has failed by reason of the difficulty of proving the case, or even by reason of the intervention of the director of public prosecutions, those seem reasons, not why the director of public prosecutions should pay the costs, but why the defendant should not get his costs, and unless it was shewn that the prosecution was vexatious, that is, begun or continued without reasonable and probable cause, or frivolous, I imagine that the Court, in the due exercise of its discretion, would decline to give the defendant the costs of the trial."

In this appeal the Deputy Public Prosecutor showed quite clearly that the Magistrate had imported into this case facts which he had learned in another case; and he threw doubt on another conclusion of the Magistrate. But the main conclusion of the Magistrate was that from Ong Yang Su's general demeanour in giving evidence he considered that "he is a scallywag and unworthy of credit." Ong Yang Su was the principle witness for the prosecution, and if his evidence was disbelieved the prosecution case must collapse. The Magistrate disbelieved it, and it is difficult to see that the Crown had much chance of succeeding in the face of that finding. The appeal was not frivolous; but if the appellant can show that it was brought without reasonable and probable cause. I think that his case will come within the words of Cave, J. which I have quoted and that he should be given the costs of this appeal. Whether he is or not, is a question which I have had great difficulty in deciding. But it is difficult to see how the Crown could have hoped to succeed in face of the emphatic finding of fact by the learned Magistrate. The recorded evidence leaves me quite in doubt, but the evidence of Robert Caldwell was also recorded. an Assistant Superintendent of Police who said of Ong Yang Su:

> "I took a statement from that man. I sent for him to come and see me. He did not give me a satisfactory statement."

With this on the record. and the case depending almost entirely on Ong Yang Su's evidence which was so emphatically disbelieved, I think that the words of Murison, C.J. in the case of *R.* v. *Ramasamy (ubi sup)* which I have already cited apply and that the respondents therefore should have the costs of this appeal, fixed at $75.

Order accordingly.

Solicitors for the Respondents—*Allen & Gledhill.*

[CRIMINAL REVISIONARY JURISDICTION]
TERRELL. J.
August 8. 1935.

REX v. TALIB BIN SAIMAN

[SINGAPORE MISCELLANEOUS APPLICATION No. 4 of 1935]

Ordinance No. 61 (Pawnbrokers) section 28.

When a magistrate is proceeding under section 28 of Ordinance No. 61 (Pawnbrokers) to determine the rights of parties to the pawned property, he should only do so in the presence of the parties. When an owner puts an agent in possession of an article as a mercantile agent, the agent can either sell or pledge the article and a pawnbroker dealing with such agent in good faith is not liable to have his security defeated.

Application for Revision of order made by a Police Magistrate.

Walters, for the Applicants (Pawnbrokers).

Worley, Deputy Public Prosecutor, for the owner of the pawned property.

The facts and arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.

TERRELL, J.—The facts of the case are perfectly simple. At 9 a.m. on the 9th April, 1935 one Hamid bin Hadji Bakar (hereinafter called the complainant), wishing to dispose of an American gold dollar and being unable to obtain more than $60 for it, handed it to one Talib bin Saiman who said he could sell it for at least $65. The conversation according to complainant took place outside a pawnbroker's shop at the corner of Arab Street and North Bridge Road, and the arrangement was that Talib should meet him again at 1 p.m. the same day and either bring the money or return to him the gold coin.

Talib however kept the gold coin and not the appointment and eight days later pawned it for $50 to the Thai Loy pawnshop. On the 2nd May. 1935 the complainant made a report at the Beach Road Police Station and Talib was duly arrested and charged with criminal breach of trust of an American gold Dollar valued at $60. On the 24th May, 1935 he pleaded guilty and on the 29th May he was sentenced to three months rigorous imprisonment. The gold coin was ordered to be restored to the complainant.

The gold coin was taken from the pawnshop by the Inspector who was in charge of the case on the 31st May, 1935 in exchange for a receipt, but the owner of the pawnshop was never notified of the proceedings and the order disposing of the property was made in his absence.

First as regards procedure. Under section 28 of Ordinance No. 61 (Pawnbrokers) a police court has power when a person has been convicted, to make an order dealing with the pawned property. A similar power is given in England by the Pawnbrokers Act 1872 section 30, and the object is to benefit prosecutors by saving them from the necessity of bringing civil proceedings to recover their property. At the same time the owner or claimant has the alternative of taking civil proceedings [*Leicester & Co.* v. *Cherryman*, (1907) 2 K.B. 101]. If however the Magistrate proceeds to exercise his powers under section 28 to determine the civil rights of parties, it is obvious that he should only do so in the presence of the parties. There is in fact a recent decision of the Full Court to that effect [*Rex* v. *Lam Lock*, (1933) S.S.L.R. 58; 2 Mal.L.J. 92]. As the learned Magistrate omitted to notify or to hear the pawnbrokers, they have petitioned the Court and the matter is brought up on revision. The complainant was also present at the hearing and all necessary parties therefore were before the Court.

The substantive question then arises whether the complainant or the owner has a better right to the gold coin. It was conceded that if Talib had stolen the coin the pawnbroker would have acquired no right to it. [*See Rex* v *Nadaison*, 4 Mal.L.J. 148] and the learned Deputy Public Prosecutor argued that on the evidence Talib might have been accused and convicted of theft, if he had the *animus furandi* at the moment when he took possession of the gold coin from the complainant. It is quite impossible to infer that Talib was guilty of stealing as no evidence was called and in fact he pleaded guilty to criminal breach of trust. The point is similar to the one that arises in England as to whether the accused is guilty of obtaining by false pretences or of larceny by a trick, and I accept the Judgment of the majority of Court of Appeal in England in *Folkes* v. *King*, (1923) 1 K.B. 282, that when the owner puts an agent in possession of the article, the point becomes immaterial, and I would refer to the following passage from the judgment of Scrutton, L.J at p. 306 of the report:—

> "On this point I take the view taken by Channell, J. and Vaughan Williams and Kennedy, L.JJ., all very experienced in trying criminal cases, that where an owner delivers goods to an agent, intending not only that he shall have possession, but shall dispose of the property, it is immaterial that the agent, ostensibly agreeing to the contract of agency, yet secretly intends to disregard it."

This passage is cited with approval by the Court of Appeal in the more recent case of *London Jewellers Ltd.* v. *Attenborough*, (1934) 2 K.B. 206 at p. 219.

It appears to me that section 2 of the Factors Act applies and I would refer to the Judgment of Scrutton L.J. in *Folkes* v. *King*, (1923) 1 K.B. 282 at page 306 where he says:—

> "The purport of the Act seems to be that an ostensible mercantile agent, ostensibly in possession of goods, can give a good title in the ordinary course of business to a *bona fide* purchaser, provided that he proves that the owner intended the agent to have possession of the goods."

For the purpose of that Act Talib was a mercantile agent. He had possession of the goods with the consent of the true owner and accordingly could either sell or pledge them. There is no evidence that the pawnbrokers were not acting in good faith and they are accordingly entitled to the possession of the gold coin as security for the money advanced.

Magistrate's Order Reversed.

Solicitors for the Applicants—

Allen & Gledhill.

[APPELLATE CRIMINAL JURISDICTION]
BURTON, Ag. C.J.
August 9, 1935.

REX v. A. L. B. SWAINE

[SINGAPORE MAGISTRATE'S APPEAL
No. 17 of 1935]

Penal Code, section 426—mischief.

The complainant was a squatter on land belonging to the Singapore United Rubber Plantations Ltd. and paid a rent of $1 per month. The complainant admitted that he had broken the terms of his contract and that he was thereby rendered liable to expulsion. The Manager of the estate expelled him without notice and caused his house to be demolished by sawing through the uprights embedded in the ground. He was charged with the offence of mischief by pulling down an attap dwelling house and poultry shed.

Held that though the complainant has given the estate just grounds to expel him and though he was probably no more than a tenant at will he was nevertheless entitled to notice of the estate's intention to expel him and a reasonable time to demolish his house and remove his goods and that the appellant was correctly convicted.

Magistrate's Appeal.

Coltart for the Appellant.

Worley, Deputy Public Prosecutor, for the Crown.

The facts and arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.

BURTON, AG. C.J.—The appellant was convicted of the offence of mischief under section 426 of the Penal Code and sentenced to a fine of $50.

The complainant Ng Hock Su was a squatter on some land belonging to the Singapore United Rubber Plantations Ltd.; he occupied a piece of land at a rental of $1 a month. This he paid regularly till in July, 1934 the rent was increased and a sum of $1.50 demanded. This led to an affray and Ng Hock Su was convicted of causing hurt to the Mandor who attempted to collect the rent.

The complainant occupied the land under a Permit signed by the Manager in these terms;

> Received from Eng Hock Su the sum of $2 being licence fee to occupy and plant a plot of land. . . .

and the Permit is subject to the conditions:

> "This permit is issued subject to conditions on reverse and is cancellable at any time without notice or compensation."

This then is the agreement under which Ng Hock Su held. He was not a bare licensee, but a licensee with a grant [*Hurt* v. *Picture Theatre Ltd.*, (1915) 1 K.B. 1] and he was I think entitled to remain in possession unless he has come within a special term of the contract which renders him liable to expulsion. Ng Hock Su admits that he has: he says:

> "I know it is against the rule to fight. I am aware that if the rules are broken I am liable to be sent off."

When Ng Hock Su caused hurt to the Mandor, the Manager sent for the Police and he was arrested. While he was in custody, and